Supreme Court, U.S.
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No. 06-768

IN THE

Supreme Court of the United States

TOWN OF MOUNT PLEASANT,

Petitioner,

v.

LEGION OF CHRIST, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In this declaratory judgment action, the Court of Appeals of the State of New York (the "Court of Appeals") rejected Petitioner Town of Mount Pleasant's use of its zoning and land use controls to preserve and stabilize the municipal tax base. The Court of Appeals held that "keeping property in taxpaying hands is not a legitimate purpose of zoning." Such holding directly conflicts with the holdings of other state courts of last resort and a United States Court of Appeals. In addition, it presents an important question of federal law that has not been, but should be, settled by this Court in order to give municipalities direction in light of the ever increasing tax burden on their residents.

The following questions are presented:

1. Does the Fourteenth Amendment of the United States Constitution prohibit a municipality from using its police power to preserve its tax base for the benefit of all residents and businesses through zoning and land use controls?

2. Is the preservation and stabilization of the municipal tax base a legitimate purpose of *Euclidean* zoning?

LIST OF PARTIES

The parties below are listed in the caption. In addition, the Becket Fund for Religious Liberty appeared as *amicus curiae* in support of Respondent Legion of Christ, Inc. before the Court of Appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioner Town of Mount Pleasant is a municipal corporation.

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The opinion of the Court of Appeals dated June 6, 2006 (the "Court of Appeals Decision") is reported at 7 N.Y.3d 122, 818 N.Y.S.2d 171 (N.Y. 2006). *See* Appendix A.

The Court of Appeals Decision affirmed and modified the Decision and Order of the Supreme Court of the State of New York, Appellate Division, Second Department (the "Appellate Division") dated August 1, 2005 (the "2005 Appellate Division Decision"), which is reported at 21 A.D.3d 368, 800 N.Y.S.2d 34 (N.Y. App. Div. 2d Dep't 2005). *See* Appendix B.

The 2005 Appellate Division Decision reversed the Judgment of the Supreme Court of the State of New York, County of Westchester (the "Trial Court") filed February 4, 2004 (the "Trial Court Judgment"), which is not reported. *See* Appendix C.

The underlying Post-Trial Decision of the Trial Court dated December 16, 2003 (the "Trial Court Decision") is reported at 2003 WL 23515112 (N.Y. Sup. Ct. Westchester Co. 2004). *See* Appendix D.

The Memorandum of the Appellate Division dated November 29, 1999 (the "1999 Appellate Division Decision") is reported at 266 A.D.2d 532, 699 N.Y.S.2d 101 (N.Y. App. Div. 2d Dep't 1999). *See* Appendix E.

The Order of the Court of Appeals dated August 31, 2006 (the "Court of Appeals Reargument Decision") denying the motion of Petitioner Town of Mount Pleasant (the "Town")

for reargument of the Court of Appeals Decision is not reported. *See* Appendix F.

STATEMENT OF JURISDICTION

The Court of Appeals Decision was rendered on June 6, 2006. The Court of Appeals Reargument Decision denying the Town's motion for reargument was entered on August 31, 2006.

This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Fourteenth Amendment, Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. *Introduction*

The Town long ago rezoned a 97-acre parcel of land (the "Property") to a new Office Business-Corporate Education Zone District (the "OB-CE District") with the intention of preserving and stabilizing its tax base and to further the Town's Comprehensive Master Plan (the "Master Plan"). The subsequent acquisition and use of the Property by Respondent Legion of Christ, Inc. (the "Legion") was incompatible with that goal, with the Town's Master Plan and with the permitted uses in the Zoning Code of the Town of Mount Pleasant (the "Town Zoning Code"). This Court should clarify that the Town's preservation of its tax base was a permissible consideration for its employing its existing zoning rules to prevent this use of the Property.

B. *Background*

1. *The Town's Intent in the Creation of the OB-CE District*

IBM was the prior owner of the Property. In 1983, it proposed a new zone district that would enable it to construct a corporate technical institute by rezoning the majority of the Property from the Town's General Office Building Zone District (the "OB-1 District") to a newly classified OB-CE District. The OB-CE District was to be for business use, and was intended to support and stabilize the real property tax base of the Town. After extensive analysis, the Town created the OB-CE District specifically for a business-only commercial/industrial "corporate training center" setting to ensure that the property in that zone would remain taxable, unless a tax-exempt applicant applied for a special permit.

The OB-CE District was designed to be compatible and conforming with the Master Plan adopted by the Town of Mount Pleasant Planning Board (the "Planning Board") in 1970, which provided that the property located along both sides of Columbus Avenue, including the subject Property, was to be used for business-industrial development and, therefore, taxable. Town Zoning Code § 218-1(C) provides that one of the main reasons for a comprehensive zoning plan for the Town is "to protect the character and the social and *economic stability* of all parts of the Town and to ensure that all developments shall be orderly and beneficial" (emphasis added).

In creating the OB-CE District, the Town Board of the Town of Mount Pleasant (the "Town Board") delegated authority to the Planning Board to make determinations as to what conditions would be deemed "pertinent" as to how the Property was to be used. Using the powers delegated to it, the Planning Board approved IBM's corporate technical institute. It did so to help finance public facilities and services, as specifically noted in the Final Environmental Impact Statement for IBM's corporate technical institute.

In a letter dated June 1, 1992, IBM asked to rezone the remaining portion of the Property from the OB-1 District to the OB-CE District in order to enhance the corporate use of the facility. On February 9, 1993, the Town granted IBM's request. Both the 1983 and the 1993 zone amendments were specifically enacted with the intent of preserving the Town's tax base.

2. *The Legion's Acquisition of the Property*

Around 1996, the Legion, a not-for-profit corporation, became interested in purchasing the Property from IBM to use it as a seminary. The Legion indicated it would seek to have the Property removed from the tax rolls.

The Legion's use of the Property, therefore, did not comply with the Master Plan and the Town's intent to preserve its tax base in creating the OB-CE District and rezoning the Property to be within that district. In addition, a seminary was a very different use from IBM's conference center (*e.g.*, people stay for longer periods of time and a general course of study is offered at a seminary, as compared with short-term corporate conferences conducted by IBM).

Before the Legion purchased the Property, Father Peter H. Hopkins, L.C. contacted Town Supervisor Robert F. Meehan and informed him that the Legion desired to establish a seminary there. Supervisor Meehan twice met with Father Hopkins to discuss this, and advised him that a seminary was not a permitted use within the OB-CE District.

On October 7, 1996, Supervisor Meehan sent a letter to Father Hopkins reiterating that a seminary was not a permitted use in the OB-CE District. He explained that the permitted use in the OB-CE District was specifically limited to corporate conferences and training which were limited in time and scope and were not the equivalent of a general course of study. In addition, occupancy on the Property would be limited to temporary overnight stays, also consistent with participation in corporate conferences. He noted that although a seminary was an impermissible use in the OB-CE District, there were many other zone districts in the Town in which a

seminary was a permitted use. He stated that the Town Zoning Code, including those provisions relating to unlawful uses, would be enforced.

Despite Supervisor Meehan's "advance warning" regarding the impermissible nature of the Legion's proposed use of the Property, the Legion proceeded to purchase the Property on or about December 12, 1996 and to establish a "Seminary for Higher Studies" and a "College of Philosophy and Theology" that serves "seminarians." It then proceeded to seek to have the 97-acre Property removed completely from the tax rolls.

C. *Procedural History*

On September 5, 1997, the Town commenced this action seeking a declaration that the Legion's use of the Property for religious purposes was in violation of the Town Zoning Code and was impermissible in the OB-CE District. In its complaint and throughout this action, the Town argued that it had the authority to restrict the permissible uses in the OB-CE District. It also referred to the intent and purpose of the OB-CE District (to promote the general welfare and preserve the Town's tax base) and the OB-CE District's compatibility with the Master Plan.

On September 16, 1998, the Trial Court granted the Legion's cross-motion for summary judgment that its religious use of the Property was permitted in the OB-CE District. It determined that the Legion's use of the Property for training and education of its seminarians, priests and the general laity was similar to that of a conference center. It held that the Legion's use of the Property, as a matter of law, was a permitted as-of-right use in the OB-CE District and complied with the requirements of the Town Zoning Code.

On November 29, 1999, the Appellate Division held that an issue of fact as to the Legion's use of the Property precluded summary judgment. Specifically, the Appellate Division held that if the Legion is using the Property in a manner similar to a seminary or a private college, then such use is not permissible in the OB-CE District absent a special permit.

In September 2003, the Trial Court conducted a non-jury trial. The Town presented evidence showing that the Legion was using the Property as a seminary or a private college, in violation of the Town Zoning Code. This was based on documentary evidence (*e.g.*, the Legion's own web site, academic programs, curricula, calendars, schedules and course descriptions for its Bachelors Degree Program on the Property) and witness testimony (*e.g.*, the residency of students on the Property who studied to become priests, the length of such residency, their course of study and their receipt of a Bachelors Degree in philosophy upon completion of the program).

The Legion attempted to demonstrate that its use of the Property was similar to the use by IBM. The Town showed, however, that the Legion's activities on the Property are significantly different from the short-term conferences that IBM held on the Property (*e.g.*, IBM did not offer a permanent course of study for a period of up to two years; conferences were for IBM employees and lasted from four to six weeks; no one lived on the Property for periods of years; and there was a turnover of the people who attended the conferences for one week or six weeks).

On December 16, 2003, the Trial Court, ruling in favor of the Legion, determined that the Legion's use of the

Property was lawful because it was not being used as a seminary or a private college. It also determined that the Town violated the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA") and awarded legal fees to the Legion pursuant to 42 U.S.C. § 1988(b). The Trial Court made that determination despite the fact that the Town had never issued any violations with respect to the Legion's use of the Property as a seminary or a private college, or prevented the Legion from using the Property as a seminary or a private college or interfered with the Legion's use of the Property.

On August 1, 2005, the Appellate Division reversed the Trial Court Judgment on the law and the facts. It determined that evidence introduced at the trial showed that the Legion used the Property as a private college, a use that was not permitted in the OB-CE District without a special permit. It also determined that the Town's interpretation of the zoning provisions of the Town Zoning Code did not violate RLUIPA.

On June 6, 2006, the Court of Appeals held that although there were differences between IBM and the Legion's use of the Property, the Property was still being used for conference and training purposes within the meaning of the Town Zoning Code and, therefore, the Legion's use of the Property was permitted as of right. It noted that a broad reading of the term "conference and training facilities" did not injure any interest of the Town that could "legitimately be protected by zoning." Appendix A, p. 7a. It noted that the Legion, unlike IBM, was tax exempt. It, however, determined that "keeping property in taxpaying hands is not a legitimate purpose of zoning." *Id.* It determined that it did not need to decide the RLUIPA question.

On August 31, 2006, the Court of Appeals denied the Town's motion for reargument.

REASONS FOR GRANTING THE PETITION

The Court of Appeals Decision directly conflicts with the holdings of other state courts of last resort and a United States Court of Appeals. In addition, it presents an important question of federal law that has not been, but should be, settled by this Court. Therefore, this Court should resolve the conflict among the state courts and give municipalities direction regarding their ability to consider the preservation of their tax base when they use zoning and land use controls.

A. *Review Is Warranted to Resolve a Conflict Between the Court of Appeals Decision and Decisions of State Courts of Last Resort and a United States Court of Appeals*

In the Court of Appeals Decision, the Court of Appeals stated that "keeping property in taxpaying hands is not a legitimate purpose of zoning." Appendix A, p. 7a. That determination conflicts with holdings of state courts of last resort and one United States Court of Appeals.

As a preliminary matter, the police power is inherent in the state's sovereign power to regulate private conduct to protect and further the public welfare. *Lawton v. Steele*, 152 U.S. 133 (1894). Zoning ordinances are within the legitimate scope of the police power. *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926). In order for zoning and other land use regulations to be valid, they must not violate the limitations placed on the exercise of the police power by the United States Constitution, including the Fourteenth

Amendment (*e.g.*, due process and equal protection). *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974).

Local municipalities may legitimately regulate land use to advance many different issues, including property values, aesthetics, health and the general welfare. *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978). Numerous state courts of last resort have thus held that preserving a local tax base, in order to fund necessary municipal services, is a legitimate purpose of zoning. *Harvey v. Town of Marion*, 756 So.2d 835 (Miss. Ct. App. 2000) (holding that an increased tax base is a valid municipal goal). In *MDJ Properties, Inc. v. Union Twp. Bd. of Trustees*, 2000 WL 313502 (Ohio Ct. App. 2000), the township argued that residential zoning of the property would provide a higher tax base for the township. The court held that "[z]oning may be properly used for the purpose of increasing or maintaining property values to advance the prosperity and economic conditions of a community." *Id.* at *5.

State courts of last resort have also held that maintaining its tax base can be considered by a municipality when making zoning determinations. *Mississippi Manufactured Housing Ass'n v. Board of Supervisors of Tate County*, 878 So.2d 180 (Miss. Ct. App. 2004), *cert denied*, 878 So.2d 67 (Miss. 2004) (affirming the board's adoption of a new comprehensive plan and amended zoning ordinance, which was intended to accommodate growth in the county while preserving the county's tax base and property values); *Woods v. Kittitas County*, 130 Wash.App. 573, 123 P.3d 883 (Wash. Ct. App. 2005) (holding that the board's finding of a substantial relationship between the proposed rezoning and the public health, safety or welfare was bolstered by the board's additional finding that the rezoning would increase the tax

base, which would provide additional services to the local community); *Warren v. Municipal Officers of Town of Gorham*, 431 A.2d 624 (Me. 1981) (holding that an adverse impact on the town's tax base related to the public health, safety, morals or general welfare); *Citizens Ass'n of Georgetown, Inc. v. District of Columbia Zoning Comm'n*, 402 A.2d 36 (D.C. 1979) (affirming an amendment of a zoning map on several grounds, including that it served the general welfare goal of zoning by, among other things, increasing the tax base); *Beck v. City of St. Paul*, 304 Minn. 438, 231 N.W.2d 919 (Minn. 1975) (holding that a rezoning of property which increased the tax base was not arbitrary, capricious or unreasonable).

At least one United States Court of Appeals has also addressed this issue. In *Lauderbaugh v. Hopewell Township*, 319 F.3d 568 (3d Cir. 2003), the court determined that the erosion of the tax base as a result of a property use is a legitimate zoning consideration because it impacts property value.

Here, the Town utilized its zoning and land use controls to preserve its tax base when it created the OB-CE District and rezoned the Property to be included within that zone district. Indeed, the Town enacted the OB-CE District for the purpose of creating a business-only commercial/industrial "corporate training center" setting for IBM to ensure that the property in that zone would remain taxable unless a tax-exempt applicant applied for a special permit. The OB-CE District was also created to be consistent with the Master Plan and the Town Zoning Code. The Town's intent was to preserve its tax base for its economic stability. *MDJ Properties, Inc.*; *Mississippi Manufactured Housing Ass'n.* The Legion's use of the Property, therefore, does not comply

with the Master Plan, the Town's creation of the OB-CE District or the rezoning of the Property to be included within that district. Accordingly, the Town's insistence on the use of the OB-CE District as a taxable district is a permissible use of its zoning power.

The Court of Appeals, however, did not make such determination. Rather, it determined that "keeping property in taxpaying hands is not a legitimate purpose of zoning." Appendix A, p. 7a. The Court of Appeals Decision with respect to this issue, therefore, conflicts with other state courts of last resort and a United States Court of Appeals.

The Court of Appeals Decision creates undesirable uncertainty in zoning law. Professor David D. Siegel, a well-known scholar on New York law, characterized the statement of the Court of Appeals as "a broad and perhaps potentially controversial statement". New York State Law Digest No. 561 (September 2006). That is because if a municipality is not able to preserve its tax base through its zoning and land use controls, but must take duly zoned and taxable property off the rolls whenever a tax-exempt organization purchases it, local government may be unable to provide necessary services or stabilize tax rates on a predictable basis.

Accordingly, this Court should review the Court of Appeals Decision in order to resolve this conflict among the state courts of last resort and a United States Court of Appeals.

B. *Review Is Warranted to Settle a Question of Federal Law*

The Court of Appeals Decision presents an important question of federal law regarding the Fourteenth Amendment's potential restriction on a municipality's police power that has not been, but should be, settled by this Court.

This Court has considered a municipality's ability to use the police power to enact zoning ordinances and other land use controls. *Village of Euclid, Ohio*; *Village of Belle Terre; Penn Cent. Transp. Co.* The Court, however, has not considered whether the Fourteenth Amendment prohibits a municipality from using its police power to preserve its tax base through zoning and land use controls.

As discussed above, many state courts of last resort and a United States Court of Appeals have held that the need to maintain a tax base can properly be considered by a municipality when making zoning determinations. There is a wide range of views on this subject, however. Some state courts have determined that increasing the tax base is a legitimate zoning goal only if the ordinance is otherwise reasonable and in accordance with a comprehensive plan. *Griswold v. City of Homer*, 925 P.2d 1015 (Alaska 1996); *Southern Burlington County N.A.A.C.P. v. Mount Laurel Twp.*, 67 N.J. 151, 336 A.2d 713 (N.J. 1975). Other state courts have determined that rezoning that would increase the tax base is not a legitimate objective of zoning. *Bossman v. Village of Riverton*, 291 Ill.App.3d 769, 684 N.E.2d 427 (Ill. App. Ct. 4th Dist. 1997); *Zuckerman v. Town of Hadley*, 442 Mass. 511, 813 N.E.2d 843 (Mass. 2004). Some state courts have even determined that "fiscal zoning" (*i.e.*, the enactment of zoning regulations for the sole purpose of curbing

population growth in order to stabilize the tax rate) is an improper zoning consideration. *Kirby v. Township Committee of Bedminster*, 341 N.J.Super. 276, 775 A.2d 209 (N.J. Super. Ct. App. Div. 2000); *Sod Farm Assocs. v. Springfield Twp. Planning Bd.*, 298 N.J.Super. 84, 688 A.2d 1125 (N.J. Super. Ct. Law Div. 1995); *aff'd*, 297 N.J.Super. 584, 688 A.2d 1058 (N.J. Super. Ct. App. Div. 1996).

The ability of a municipality at least to preserve its existing tax base in making a zoning determination is of great public importance. Municipalities should have a definitive direction as to what extent they can constitutionally consider the preservation of their tax base when they use their zoning and land use controls. Accordingly, the Court should review this issue to provide municipalities with such direction.

CONCLUSION

For the reasons set forth above, it is respectfully requested that this Court grant a petition for a writ of certiorari to review this important case.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE COURT OF APPEALS OF THE STATE OF NEW YORK FILED JUNE 6, 2006

STATE OF NEW YORK
COURT OF APPEALS

No. 75

Town of Mount Pleasant,

Respondent,

v.

Legion of Christ, Inc.,

Appellant.

OPINION

R. S. SMITH, J.

The Town of Mount Pleasant Code allows the use of a parcel of land for "[c]onference and training facilities." When this zoning was adopted the property was owned by International Business Machines Corporation (IBM), which used it to train its own employees, and rented it to others who made similar use of it. IBM sold the property to defendant, Legion of Christ, Inc. (the Legion), an order of the Roman Catholic Church, which uses the property for the training of future priests and for other religious education. Apart from the subject matter taught, the chief difference between IBM's use and the Legion's is that many of the people now being taught are in long-term programs and thus

live on the property for a year or two. We hold that, despite this difference, the property is still being used for conference and training purposes within the meaning of the Town Code, and the Legion's use is therefore permitted as of right.

Facts and Procedural History

IBM acquired the 97-acre property sometime before 1983, when the Town created a new "Office Corporate Education" or "OB-CE" zoning district, coextensive with the property. A provision of the Town Code enacted in that year said that one of the purposes of the new district was to provide an "opportunity for private enterprise" to educate "the employees of major corporations" (Town of Mount Pleasant, Addendum to Zoning Book, June 28, 1983). IBM built a conference center on the property, which it used to train its employees.

IBM decided in the early 1990s that it wanted to rent out its conference center from time to time, and it asked for and was granted a change in the Town Code's description of the OB-CE district. A 1993 amendment eliminated the Code's reference to "private enterprise" and changed its language to refer to "the employees of major corporations and others" (*see* Town of Mount Pleasant Code § 218-74, as amended Feb. 9, 1993). After this zoning change, IBM rented the property to profit-making and nonprofit enterprises, including a university, a college and a church. These lessees used IBM's facility for conference and training purposes without objection from the Town.

The Town did object, however, when IBM sold the property to a tax exempt entity, the Legion, in 1996. (IBM also sold the Legion an adjacent parcel, which has been the subject of other litigation with the Town [*see Matter of Legion of Christ v. Town of Mount Pleasant,* 1 N.Y.3d 406, 774 N.Y.S.2d 860, 806 N.E.2d 973 (2004)].) Before the purchase, the Town warned the Legion that it would not be permitted to use the property at issue here for "a seminary," and after the purchase the Town began this action. The Town's complaint sought a judgment "[d]eclaring the use of the property .. . for religious purposes to be in violation of the applicable zoning," but the Town-perhaps influenced by Congress's passage of the Religious Land Use and Institutionalized Persons Act (42 USC § 2000cc *et seq.* [RLUIPA]) while the action was pending-has now abandoned its claim that religious use of the property is forbidden. The Town still argues, however, that the Legion is using the property as a college or seminary, and that it may not do so without a special permit.

The Legion has referred to the facility it operates on the property as "the Seminary for Higher Studies" and as "a College of Philosophy and Theology." It has discarded these terms, however, and now describes the facility as a "conference center" or "training center." It asserts that its use of the property is not materially different from IBM's. Apart from converting two rooms into chapels, the Legion has made few physical changes in the building: it uses the same bedrooms, the same rooms for preparing and serving food, the same classrooms, even the same weight room.

Appendix A

Those trained on the property by the Legion include "brothers in formation"-members of the Legion who are studying philosophy as part of their lengthy preparation for the priesthood. These men may study and live on the property for as long as two years. A brother who completes the philosophy course receives what the Legion calls an "ecclesiastical degree," though the "degrees" are not authorized by the State and are accepted at few, if any, other institutions. The Legion also offers classes of shorter duration for diocesan priests and laypeople; these programs, which could reasonably be called conferences, may be as brief as a week, or a single day. When IBM owned the property, the courses were, apparently, all short-term; the record does not show that any instructional program was longer than six weeks, though people teaching or administering such programs were there for as long as six months at a time.

Supreme Court and the Appellate Division addressed two issues: whether the Legion's use complies with the Town Code and whether the Town's interpretation of the Code to prohibit that use violates RLUIPA. Supreme Court ruled in the Legion's favor on both issues and held that the Legion was entitled to attorneys fees; the Appellate Division reversed both rulings and denied attorneys' fees. We now hold that the Legion's use is lawful under the Town Code. We do not reach the RLUIPA issue, and we affirm the denial of attorneys' fees.

Appendix A

Discussion

The Town Code defines the "Permitted Principal Uses" of property in the OB-CE district as follows:

> "1. Conference and training facilities to include but not be limited to:
>
> "a. Continuing education activities and facilities.
>
> "b. Classroom space and teaching equipment.
>
> "c. Offices for staff.
>
> "2. Indoor and outdoor physical recreational facilities.
>
> "3. Housing and dining facilities provided that such facilities are not operated as a public hotel or public restaurant as defined in § 218-74F."

(Town of Mount Pleasant Code, ch 218, Schedule of Regulations, Residence Districts IIIA.)

The Legion uses the property as the Town Code specifies. It conducts brief programs that could be labeled "[c]onference[s]" and it provides "training" to its brothers in formation and others. Substantially all of its activities consist of "[c]ontinuing education," and to that end it uses "[c]lassroom space," "teaching equipment" and "[o]ffices for staff." It also uses "[i]ndoor and outdoor physical recreational

facilities," and "[h]ousing and dining facilities." In short, the Town Code definition might almost have been written to describe what the Legion does on the property-and this is unsurprising, for it was written to describe what IBM did there, and the Legion does much the same thing.

The Legion provides religious training and education, while the activities of IBM and its tenants were largely secular, but the Town no longer claims that the Code forbids the Legion's use on that ground. In arguing that the Legion's use is significantly different from IBM's, the Town relies primarily on the duration of the Legion's residential programs-up to two years, in contrast to the much shorter programs run by IBM and its tenants. The Town contends that an institution offering a two-year course of study is better described as a college or seminary than as a conference and training center.

We reject the Town's argument. Nothing in the Town Code says or implies that only training programs of relatively short duration are permitted in the OB-CE district. Indeed, by specifically forbidding "hotel or public restaurant" use, the Town showed itself to be worried more about short-term than long-term visitors. We conclude that the property, as used by the Legion, is a conference and training center within the meaning of the Town Code. Whether it could also be called a college or a seminary is irrelevant.

We give a broad interpretation to the term "[c]onference and training facilities" not only because the Town Code defines the term broadly, but also because a broad reading does not injure any interest of the Town that can legitimately

be protected by zoning. The longer duration of the Legion's programs appears to be completely harmless from the Town's point of view. The Town does not claim that the Legion's use of the property presents any traffic, health, safety or similar problem that was not also presented by IBM's use. Of course, there is one difference that is important to the Town-the Legion, unlike IBM, is tax exempt. But keeping property in taxpaying hands is not a legitimate purpose of zoning.

We therefore hold the Legion's use permitted under the Town Code. We do not need to, and do not, decide the RLUIPA question addressed by the courts below.

We affirm the Appellate Division's denial of attorneys' fees, which may be awarded under 42 USC § 1988(b) to the prevailing party in an RLUIPA action. We recognize that at times, when a party asserts both state and federal claims and prevails on the former, it may be entitled either to a ruling on its federal claim for purposes of deciding the fee issue or to an award of fees even in the absence of a ruling on the federal claim (*Matter of Johnson v. Blum*, 58 N.Y.2d 454, 458 n. 2, 461 N.Y.S.2d 782, 448 N.E.2d 449 [1983]). That rule does not apply here, however. When this action was brought RLUIPA had not even been enacted, and the Legion then had available to it the state-law defense that we have found dispositive. The provision of state law on which this case turns is not a state counterpart to RLUIPA, but a local zoning code. It would distort reality to hold that the Legion is the "prevailing party" in an RLUIPA case.

Appendix A

Accordingly, the order of the Appellate Division should be modified, with costs to the Legion, by granting judgment declaring that the Legion's use of the property is permitted as of right by the Town Code, and, as so modified, should be affirmed.

Order modified, with costs to defendant, by granting judgment declaring in accordance with the opinion herein and, as so modified, affirmed. Opinion by Judge R.S. Smith. Chief Judge Kaye and Judges G.B. Smith, Ciparick, Rosenblatt, Graffeo and Read concur.

Decided June 6, 2006

APPENDIX B — DECISION AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT FILED AUGUST 1, 2005

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division: Second Judicial Department

Argued - June 2, 2005

___AD3d___

SONDRA MILLER, J.P.
DANIEL F. LUCIANO
STEPHEN G. CRANE
ROBERT A. LIFSON, JJ.

2004-02406

Town of Mount Pleasant, appellant, v
Legion of Christ, Inc., respondent.

(Index No. 14047/97)

DECISION & ORDER

In an action for a judgment declaring that the defendant's use of the subject property does not comply with the zoning provisions of the Town of Mount Pleasant Code, the plaintiff appeals from a judgment of the Supreme Court, Westchester County (Donovan, J.), dated February 3, 2004, which declared, inter alia, that the defendant's use of the subject property does comply with the zoning provisions of the Town of Mount Pleasant Code, the defendant's use of the property

is not that of a private college, and the plaintiff's interpretation of the zoning provisions of the Town of Mount Pleasant Code violates the Religious Land Use and Institutionalized Persons Act of 2000, and awarded the defendant legal fees in the action pursuant to 42 USC § 1988.

ORDERED that the judgment is reversed, on the law and the facts, with costs, and it is declared that the defendant's use of the subject property, in part, as a private college does not comply with the zoning provisions of the Town of Mount Pleasant Code, that the defendant's use of the property is, in part, that of a private college requiring an application for a special permit, and that the plaintiff's interpretation of the zoning provisions of the Town of Mount Pleasant Code does not violate the Religious Land Use and Institutionalized Persons Act of 2000.

The Supreme Court erred in declaring that the defendant's use of the subject property complied with the zoning provisions of the Town of Mount Pleasant Code, as the evidence introduced at trial showed that the property is used, in part, as a private college, a use that is not permitted in the subject zoning district without a special permit.

The Supreme Court also erred in declaring that the plaintiff's interpretation of the zoning provisions of the Town of Mount Pleasant Code violated the Religious Land Use and Institutionalized Persons Act of 2000 (42 USC § 2000 *et seq*.) and in awarding the defendant legal fees pursuant thereto. Requiring a religious organization to go through the same special permit application process as a secular organization cannot be considered a substantial burden on

the exercise of religious freedom (*see Civil Liberties for Urban Believers v City of Chicago*, 342 F3d 752, 761-762, *cert denied* 541 US 1096; *cf. Cutter v Wilkinson*, __ US __ [May 31, 2005]).

S. MILLER, J.P., LUCIANO, CRANE and LIFSON, JJ., concur.

ENTER:

s/ James Edward Pelzer
James Edward Pelzer
Clerk of the Court

APPENDIX C — JUDGMENT OF THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF WESTCHESTER FILED FEBRUARY 4, 2004

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

Index No. 14047/97

TOWN OF MOUNT PLEASANT,

Plaintiff,

-against-

LEGION OF CHRIST, INC.,

Defendant.

JUDGMENT

PRESENT: HON. W. DENIS DONOVAN
Justice of the Supreme Court

Based upon this Court's Decision dated and entered on December 16, 2003,

NOW, THEREFORE, on the motion of SHAMBERG MARWELL HOCHERMAN DAVIS & HOLLIS, P.C., counsel for the Defendant, it is hereby

ORDERED, that the Findings of Fact and Conclusions of Law set forth in this Court's Decision, dated and entered on December 16, 2003, a copy of which is annexed hereto

and made a part hereof, as Exhibit A, are incorporated by reference herein as if fully set forth herein; and it is further,

ORDERED, ADJUDGED AND DECLARED that Defendant's use of the Property known as the Thornwood Catholic Conference Center, located at 582-590 Columbus Avenue, in the Town of Mount Pleasant (the "Property"), including the separate office building located on the Property which is the subject matter of this action complies in all respects with the OB-CE Zoning Regulations of the Town of Mount Pleasant; and it is further,

ORDERED, ADJUDGED AND DECLARED that Defendant's use of the Property for training, education and conferences for lay people, priests, ordained members of Defendant's Order and Brothers in Formation is not that of a private college or a seminary; and it is further,

* * *

ORDERED, ADJUDGED AND DECLARED that at all relevant times, the office building on the Property has been occupied for permitted office purposes; and it is further,

* * *

ORDERED, ADJUDGED AND DECLARED that Plaintiff's interpretation, implementation and/or enforcement of the OB-CE Zoning Regulations violates RLUIPA; and it is further,

* * *

Appendix C

ORDERED, that Defendant is entitled to an award of its legal fees pursuant to 42 U.S.C. § 1988(b) (2003), in an amount to be determined upon the submission to this Court of an affidavit of services by the Defendant and its counsel and/or any further hearing or proceeding that may be necessitated and directed by further decision of this Court after its review of said affidavit of legal services; and it is further,

ORDERED, ADJUDGED AND DECLARED that Plaintiff's Complaint be and the same hereby is dismissed in its entirety, with prejudice; and it is further

ORDERED, that Defendant have Judgment against Plaintiff for costs and disbursements in this action; as taxed by the Clerk.

White Plains, New York
February 3, 2004

ENTER:

s/ W. Denis Donovan
W. Denis Donovan, J.S.C.

Judgment entered this 4 day
of Feb., 2004

s/ Leonard N. Spano
Clerk of the Supreme Court
and County of Westchester

APPENDIX D — POST-TRIAL DECISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF WESTCHESTER FILED DECEMBER 16, 2003

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF WESTCHESTER

PRESENT: W. DENIS DONOVAN, J.S.C.

To commdence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. 14047/97

TOWN OF MOUNT PLEASANT,

Plaintiff,

-against-

LEGION OF CHRIST, INC.,

Defendant.

POST-TRIAL DECISION

DONOVAN, J.

Upon remand from the Appellate Division, this court conducted a bench trial on September 16, 17, and 18, 2003. Based on the entire record, including the testimony and

exhibits adduced at the trial, and the following post-trial submissions, the court issues the following post trial decision:

	PAPERS NUMBERED
Plaintiff's Post-Trial Memorandum/Proposed Findings	1, 2
Transcript	3
Defendant's Post-Trial Memorandum/ Exhibits	4, 5
Proposed Findings	6

FINDINGS OF FACT REGARDING ALLEGED ZONING VIOLATIONS

1) Plaintiff Town of Mount Pleasant is a municipal corporation organized and existing under the laws of the State of New York within whose geographical boundaries Defendant's property is situated. The Town has its own zoning ordinance in which was established the Office Business-Corporate Education ("OB-CE") classification and a singular zoning district (the "OB-CE Zone") within which the subject 97-acre parcel (the "Property") is located. The Property is the only property in the entire Town located in the OB-CE Zone. Plaintiff's Assessor denied Defendant's application for tax-exempt status for the property, and a Board of Assessment Review affirmed the Assessor's denial on the grounds of alleged non-compliance with the Town's zoning ordinance.

2) Defendant Legion of Christ, Inc. is a recognized international religious Order of the Roman Catholic Church and a not-for-profit corporation organized under the laws of

the State of New York. It currently has almost 600 priests and approximately 2,700 men in formation in nineteen countries worldwide. Founded in 1941, the Legion's mission is "to form . . . lay people to take their role within the [C]hurch and within society to help build this Christian society." In furtherance of its mission, the Legion owns and/or operates several universities, schools, retreat centers, houses for consecrated women, centers of formation for men and women, and centers of apostolic.

3) The Property at issue is a 97-acre parcel on the northerly side of Columbus Avenue in the Town of Mount Pleasant, which Defendant purchased (together with an adjacent unimproved 168-acre parcel) from International Business Machines ("IBM") in December 1996. The adjacent parcel is not the subject of this action. At the time it purchased the Property from IBM, Defendant also purchased the entire inventory of furniture and equipment that had been used by IBM at the Conference Center.

4) The Property is improved with a 282,000 square foot conference center with three wings, including 250 bedrooms, classrooms, an auditorium, a dining room facility, a gymnasium and offices. There is also a 48,000 square foot office building on the Property, together with parking areas to serve both facilities. IBM constructed all buildings and improvements.

5) Until June, 1983, the Conference Center was zoned "OB-1 General Office Building District." In May, 1983, IBM petitioned the Mount Pleasant Town Board to rezone approximately 87 acres of its site from the OB-1 District to

a new zoning designation-a "Corporate Technical Institute (CTI)" district-to permit IBM to construct the conference center where it could operate an in-house continuing education program, and an office building. IBM also requested the right to establish offices for its resident staff, classrooms, a library, resident facilities for approximately 250 students, and recreational facilities.

In June, 1983, the Town Board granted IBM's request and created the OB-CE District, in which education, conference and training facilities were allowed, and mapped the requested 87 acres for this designation. The specific activities and improvements authorized in the OB-CE District as of right included "private corporate" continuing education activities and facilities, classrooms, offices, indoor and outdoor physical recreational facilities, and housing and dining facilities for the exclusive use of IBM.

The OB-CE zone was expanded from 87 acres to 97 acres.

The only special permit use allowed in the OB-CE District as adopted was "office building uses" in accordance with the standards and provisions of the OB-1 District; there is no provision for a special permit for a seminary or private college in the OB-CE Zone.

After obtaining site-specific approvals from the Planning Board, IBM constructed the Conference Center and the office building on the Property together with parking to satisfy the requirements of both buildings.

Appendix D

6) Due to decreasing utilization of the Conference Center for its own purposes, IBM petitioned the Town Board in June, 1992, to amend the provisions of the OB-CE Zone to expand the utilization of the existing facility by allowing its use by other than IBM employees for a broader range of types of education, requesting that the reference to "private, corporate training facilities" in the Ordinance be replaced with "conference and training facilities" and that the facility be allowed to be used for the training of "employees of major corporations and others."

The Town granted IBM's petition in February, 1993, and amended the OB-CE Regulations to the form in which they exist today.

Section 218-74 of the Zoning Ordinance identifies as one of the purposes of the OB-CE District

> "to provide office, housing, dining and conference facilities in an appropriate physical setting to adequately advance, support, serve and benefit the education of the employees of major corporations and others."

The Schedule of Regulations for the OB-CE Zoning District specifically enumerates the following activities and facilities as being permitted in the District:

> 1. Conference and training facilities to include but not be limited to:
>
> (a) Continuing education activities and facilities;

(b) Classroom space and teaching equipment;

(c) Offices for staff.

2. Indoor and outdoor physical recreational facilities;

3. Housing and dining facilities provided that such facilities are not operated as a public hotel or public restaurant as defined in § 218-74.F.

There was no change to the special permit use in the OB-CE Zone at the time of this amendment.

7) From 1983 until 1993, IBM used the classrooms, library and meeting rooms in the Conference Center for long-term, in-house technical training of its employees.

From the amendment of the Zoning Ordinance in 1993 to its sale of the property to Defendant in 1996, IBM continuously leased portions of the Conference Center facility to both commercial business corporations and not-for-profit and religious corporations including Columbia University, a number of community school districts, LaGuardia Community College, and the Lutheran Brotherhood, for their training and continuing programs. During this same time, IBM continued to offer courses at the Center, albeit on a reduced scale. The duration of such conferences ranged from 4 weeks to 6 months. The Town never objected to the length of the participants' stay at the Conference Center.

Appendix D

8) Shortly after closing title on its purchase of the Conference Center including its furniture and equipment in December, 1996, Defendant commenced its training, conference and education programs at the Property. Its programs provided, and continue to provide, training, education and conferences for ordained Legionaire priests, Brothers in Formation, Diocesan priests and *lay people* for their duties as advocates of the principles of the Catholic Church. The subject matter of such instruction, conferences and seminars includes the social teaching of the Catholic Church, faith and life issues, modern religious and contemporary faith issues, philosophy and theology, human and spiritual development, Pastoral Training, internship training, missionary work, evangelization techniques, marriage preparation (Pre-Cana) and renewal, foreign languages, metaphysics, logics, epistemology, social ethics, general ethics, natural theology, intellectual virtues, law and the common good and God, man and philosophy.

Defendant's programs have been offered to and attended by a wide array of individuals, including priests, lay people, married couples, engaged couples, and others.

Like the participants in the IBM programs, the participants in Defendant's programs at the Conference Center do not have a uniform length of stay. The participants' duration of stay varies according to the type of program and the group to which it is offered.

Defendant's education and training programs and conferences are held in the same classrooms and conference rooms that IBM used for the same purposes. The participants

utilize the same indoor and outdoor recreational facilities, housing and dining facilities, and even the same furnishings used by IBM for its conference and training center activities.

Plaintiff did not contest Defendant's evidence as to its use of the Property. In fact, Plaintiff's Supervisor candidly admitted during trial that he has never been on the Property since Defendant purchased it and has no independent knowledge of the nature and types of activities and programs occurring at the Conference Center and Plaintiff offered no testimony from any other person familiar with Defendant's use.

Defendant has made no structural changes or additions to the Conference Center.

Defendant's use of the Property complies in all respects with the OB-CE Zoning Regulations.

Defendant's use of the Property is identical in all material respects to IBM's use of the Property, with only a *de minimus* difference in the length of stay of some of the program participants, which is irrelevant and immaterial to the issue before this Court. The OB-CE Regulations contain no limitation on the duration of the programs conducted at the Center, or concomitantly, the length of the stay of the participants.

Private colleges and seminaries are not permitted uses in the OB-CE Zoning District, either by special permit or otherwise.

Appendix D

Defendant is not using the Property as a private college because Defendant is not authorized to grant educational or vocational degrees by the State of New York; because Defendant has applied for approval to construct a four-year liberal arts degree-granting university on its adjacent parcel of real property; and because the Brothers in Formation who study at the Conference Center do not become entitled to receive any degree as a result of having studied for an indeterminate period of time at the Conference Center.

Defendant is not using the Property as a seminary because it is a center of formation for members of the Legion of Christ congregation, where students study philosophy, theology and other topics, for an indefinite period of time during their formation process, do not receive a recognized degree, and are not ordained as priests upon their completion of their studies.[1]

---

1. It is ludicrous to call an institution a college, where such courses are offered as enumerated in Defendant's trial exhibit T, where no degree is conferred, and where no Brother in Formation or any other person in attendance resides but two years or less.

Brothers are not professed at this institution.

Of all the Holy Orders the Catholic Church requires for the priesthood, i.e., Initiation, Lector, Acolyte, Deaconate, and Holy Orders Ordination, plus all additional religious vows, i.e., poverty, chastity, obedience, et al., none of these are conferred at this institution. This court has *never* heard of a seminary that requires less than six to eight years of intensive study within its walls and where steps toward the priesthood and degrees are progressively conferred.

Appendix D

At all relevant times, the Office Building on the Property has been occupied for permitted office purposes.

CONCLUSIONS OF LAW REGARDING ALLEGED ZONING VIOLATIONS

9) The OB-CE Regulations permit the operation of a training, education and conference center by a not-for-profit entity, such as Defendant.

Defendant's use of the Conference Center is for the training and education of Diocesan priests, lay people, ordained Legionaires and Brothers in Formation. Its use conforms in all respects to the provisions of the OB-CE Regulations and is permitted in that District.

Seminaries and private colleges are not permitted by special permit in the OB-CE Zone, or otherwise.

Plaintiff has failed to prove either by a preponderance of the evidence, or by clear and convincing evidence, that Defendant is using the Conference Center as a seminary or private college or in violation of the provisions of the OB-CE Regulations.

FINDINGS OF FACT REGARDING ALLEGED VIOLATION OF RLUIPA

1) Defendant is a religious assembly or institution under RLUIPA whose interstate and international activities affect interstate commerce.

2) The OB-CE Regulations are land use regulations subject to RLUIPA, which limit and restrict Defendant's use of the Property.

3) Plaintiff is a municipality created under the authority of the State as regulated by RLUIPA.

4) Defendant uses the Property in the fulfillment of its mission to train and educate *lay and ordained people* in the Catholic faith and, thus, as part of its religious exercise.

5) Plaintiff's interpretation, implementation and enforcement of the OB-CE Regulations to preclude Defendant from training the Brothers and others at the Conference Center substantially burdens the exercise of religion by Defendant and others. Plaintiff's interpretation, implementation and enforcement of the OB-CE Regulations prohibit Defendant from pursuing an integral aspect of its mission and from engaging in conduct central to its religious beliefs. Stated differently, under Plaintiff's interpretation, Defendant could not train the Brothers and others at the Conference Center or conduct conferences and would thereby have to modify an important aspect of its religious practice in order to avoid violating the Ordinance.

6) Conference Centers are not permitted in any other Zoning District in the Town. Thus, an interpretation of the OB-CE Regulations in a way that denies Defendant the right to hold conferences and seminars for Catholic laity and religious, will prevent Defendant from pursuing its formation mission in the Town.

Appendix D

7) If Plaintiff's interpretation of the OB-CE Regulations is upheld, Defendant is left with the untenable option of violating the law or abandoning an important part of its mission.

8) The trial evidence showed conclusively that IBM's and the Legion's respective uses of the Property are the same in every material respect and that the Town treats the Legion on less than equal terms with IBM, a non-religious assembly.

9) The only "compelling governmental interests" identified by Plaintiff at trial to justify its unequal enforcement of the OB-CE Regulations against the Legion is the alleged need to protect the community from a purported "*per se*" detriment to the community's welfare that supposedly results from an alleged violation of an ordinance and the loss of tax revenues. Plaintiff agreed that there was no detriment to the health and/or safety of the residents of the Town.

10) Based on the uncontroverted evidence introduced at trial, no aspect of Defendant's use contravenes the provisions of the OB-CE Regulations or is detrimental to the health, safety or welfare of the citizens of the Town. On the contrary, Defendant's use is less intrusive to and burdensome on the Town than IBM's use of the Property as a result of less frequent changeover in some of the participants staying at the Conference Center.

Appendix D

CONCLUSIONS OF LAW REGARDING ALLEGED VIOLATIONS OF RLUIPA

11) Defendant sustained its burden of establishing a *prima facie* case of a violation of RLUIPA.

12) Unspecified detriments to the community because of an alleged and unfounded violation of a zoning law and the loss of tax revenues are not "compelling governmental interests" supporting Plaintiff's interpretation, implementation and/or enforcement of the OB-CE Regulations in such a manner as treats a religious assembly on less than equal terms with a non-religious entity.

13) Plaintiff failed to sustain its burden of proving that its interpretation, implementation and/or enforcement of the OB-CE Regulations advances a compelling governmental interest, as required under RLUIPA.

14) Defendant is entitled to a judgment that Plaintiff's interpretation, implementation and/or enforcement of the OB-CE Regulations violate RLUIPA; an injunction enjoining Plaintiff from interfering with Defendant's use of the Conference Center to train and educate Catholic lay people and religious any further; and an award of attorney's fees pursuant to 42 U.S.C. Section 1988(b), in an amount to be determined upon further proceedings before this Court.

Counsel are directed to settle judgment consistent with the foregoing.

Appendix D

Counsel are further directed to pick up their own exhibits within seven days of the entry of this other, otherwise the exhibits will be discarded.

ENTER:
s/ W. Denis Donovan
HON. W. DENIS DONOVAN
Justice Supreme Court

Dated: December 16, 2003
White Plains, New York

To: THACHER PROFFITT & WOOD
50 Main Street
White Plains, New York 10606
Attorneys for Plaintiff

SHAMBERG MARWELL, HOCHERMAN
DAVIS & HOLLIS, P.C.
55 Smith Avenue
Mt. Kisco, New York 10549
Attorneys for Defendant

APPENDIX E — MEMORANDUM OF THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND DEPARTMENT FILED NOVEMBER 29, 1999

SUPREME COURT, APPELLATE DIVISION, SECOND DEPARTMENT, NEW YORK.

Nov. 29, 1999.

TOWN OF MOUNT PLEASANT,

appellant,

v.

LEGION OF CHRIST, INC.,

respondent.

WILLIAM C. THOMPSON, J.P., DANIEL W. JOY, GABRIEL M. KRAUSMAN and GLORIA GOLDSTEIN, JJ.

MEMORANDUM BY THE COURT.

In an action for a judgment declaring that the defendant's use of the subject property does not comply with zoning provisions of the Town Code, the plaintiff appeals from an order of the Supreme Court, Westchester County (Donovan, J.), entered September 17, 1998, which denied its motion for summary judgment and granted the defendant's cross motion for summary judgment.

Appendix E

ORDERED that the order is modified, on the law, by deleting the provision thereof granting the defendant's cross motion for summary judgment and substituting therefor a provision denying the cross motion; as so modified, the order is affirmed, with costs to the plaintiff, and the matter is remitted to the Supreme Court, Westchester County, for further proceedings consistent herewith.

Prior to 1983 the subject property was zoned for office building use. Any use permitted in a residential district, including educational use as a private college, was permissible by special permit.

In 1983, at the request of its then owner, International Business Machines (hereinafter IBM), the subject property was rezoned as an "OB-CE" Office Corporate Education District. The purpose of the OB-CE District was to "provide office, housing, dining and conference facilities in an appropriate physical setting to adequately advance, support, serve and benefit the education of the employees of major corporations and others" (Town Code § 218-73). In granting IBM site plan approval, the Town Board found that that use would foster the goals set forth in the Town Master Plan to encourage office development in "selected locations * * * to expand the Town's tax base to help residential property owners in the financing of the public facilities and services needed by the Town's residential population". The principal permitted use in that district is "[c]onference and training facilities". However, uses previously permitted by special permit are still permissible by special permit.

Appendix E

Before it purchased the property in 1996, the defendant was warned in writing that use of the property as a seminary was not a permitted use, because "use in that district is specifically limited to corporate conferences and training which are by normal and reasonable parlance limited in time and scope and not the equivalent of a general course of study". Nevertheless, the defendant purchased the property, and contends that its use of the property is permissible as a matter of right.

The defendant contends that its primary use of the property is to "offer instruction, conferences, and seminars to its members and others". However, it acknowledges that many of its students are residents on the premises, attending classes in philosophy, theology, and related topics, and its calendar of events indicates that in addition to providing conferences, and seminars, it also has a regular schedule of semester courses. Thus, it appears that it may be using the property in a manner similar to a seminary or private college, which is not permissible without a special permit.

Accordingly, there are issues of fact which preclude the granting of summary judgment.

APPENDIX F— ORDER OF THE COURT OF APPEALS OF THE STATE OF NEW YORK DATED AUGUST 31, 2006

STATE OF NEW YORK,
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the thirty-first ***day*** **of** August 2006

Present, Hon. Judith S. Kaye, *Chief Judge, presiding.*

Mo. No. 828

Town of Mount Pleasant,

Respondent,

v.

Legion of Christ, Inc.,

Appellant.

A motion for reargument in the above cause having been heretofore made upon the part of the Town of Mount Pleasant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied with one hundred dollars costs and necessary reproduction disbursements.

s/ Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

No. 06-768

IN THE

Supreme Court of the United States

TOWN OF MOUNT PLEASANT,

Petitioner,

v.

LEGION OF CHRIST, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF IN OPPOSITION

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Attorneys for Respondent

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COUNSEL PRESS
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STATEMENT PURSUANT TO RULE 29.6

Respondent Legion of Christ, Inc. is a not-for-profit organization that is not publicly traded. It has no parent corporation and no publicly held corporation owns 10% or more of its stock.

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INTRODUCTION

In this declaratory judgment action, the New York State Court of Appeals, the State's highest court, unanimously made extensive findings of fact and held solely, as a matter of State law, that the use of a parcel of real property by its owner Respondent Legion of Christ, Inc., a recognized order of the Roman Catholic Church, complies with the applicable provisions of Petitioner's municipal zoning regulations.

Specifically, the Court stated in its June 6, 2006 Opinion that is the subject of the Petition,

> We hold that ... the property is still being used for conference and training purposes within the meaning of the Town Code, and the Legion's use is therefore permitted as of right. (Pet. App. at 2a)
>
> ...
>
> The provision of state law on which this case turns is ... a local zoning code. (Pet. App. at 7a)

Since the Court decided this matter on an adequate, independent ground of State law, this Court is without jurisdiction to hear this matter and should deny the Petition on this ground alone, as discussed below at Point 1.

This Court should also deny the Petition because Petitioner failed to present properly to the State courts, and the Court of Appeals did not address, any Constitutional claim or the federal question Petitioner now seeks to raise, as discussed below at Point 2.

Petitioner, a municipal corporation, seeks protection under the Fourteenth Amendment of the United States Constitution, protection to which it is not entitled.

Alternatively, Petitioner seeks an advisory opinion from this Court. This Court should deny the Petition on either ground, as discussed below at Point 3.

Petitioner also seeks to invoke this Court's jurisdiction by asserting that the Court of Appeals's Opinion conflicts on a substantial question of federal law with the decision of another state's court of last resort. For the reasons discussed below at Point 4, Petitioner has failed to raise any such conflict so as to warrant review by this Court.

Furthermore, Petitioner now seeks to transform one sentence of dictum in the Court of Appeals's Opinion into a question of federal or Constitutional law for review by this Court, a request this Court should also reject for this reason alone, as discussed below at Point 5.

Thus, Respondent respectfully submits that this is a case over which this Court lacks jurisdiction, as the New York Court of Appeals ruled on an adequate and independent ground of State law. It presents no issue of national jurisprudential significance, does not properly present any issue of federal or Constitutional law or any issue representing a conflict between the subject Opinion and a decision by the highest court of any other state or a United States Court of Appeals. It is solely a ruling by New York State's highest court in which that Court interprets and applies a local municipal zoning regulation on State law grounds. This case does not satisfy any of the requirements to merit review by this Honorable Court.

COUNTER-STATEMENT OF FACTS

One need to look no further for the correct factual statement of this case than the following portions of the Court of Appeals's Opinion itself (Pet. App. 1a - 8a):

The Town of Mount Pleasant Code allows the use of a parcel of land for "[c]onference and training facilities." When this zoning was adopted the property was owned by International Business Machines Corporation (IBM), which used it to train its own employees, and rented it to others who made similar use of it. IBM sold the property to defendant, Legion of Christ, Inc. (the Legion), an order of the Roman Catholic Church, which uses the property for the training of future priests and for other religious education. Apart from the subject matter taught, the chief difference between IBM's use and the Legion's is that many of the people now being taught are in long-term programs and thus live on the property for a year or two.

. . .

IBM acquired the 97-acre property sometime before 1983, when the Town created a new "Office Corporate Education" or "OB-CE" zoning district, coextensive with the property. A provision of the Town Code enacted in that year said that one of the purposes of the new district was to provide an "opportunity for private enterprise" to educate "the employees of major corporations" (citation omitted). IBM built a conference center on the property, which it used to train its employees.

IBM decided in the early 1990s that it wanted to rent out its conference center from time to time, and it asked for and was granted a change in the Town Code's description of the OB-CE district. A 1993 amendment eliminated the Code's reference to "private enterprise" and changed its language to refer to "the employees of major corporations and others" (*see* Town of Mount Pleasant Code § 218-74, as amended Feb. 9, 1993). After this zoning change,

IBM rented the property to profit-making and nonprofit enterprises, including a university, a college and a church. These lessees used IBM's facility for conference and training purposes without objection from the Town.

The Town did object, however, when IBM sold the property to a tax exempt entity, the Legion, in 1996. . . . Apart from converting two rooms into chapels, the Legion has made few physical changes in the building: it uses the same bedrooms, the same rooms for preparing and serving food, the same classrooms, even the same weight room.

. . .

The Town Code defines the "Permitted Principal Uses" of property in the OB-CE district as follows:

1. Conference and training facilities to include but not be limited to:

    a. Continuing education activities and facilities.

    b. Classroom space and teaching equipment.

    c. Offices for staff.

2. Indoor and outdoor physical recreational facilities.

3. Housing and dining facilities provided that such facilities are not operated as a public hotel or public restaurant as defined in § 218-74F.

(Town of Mount Pleasant Code, ch 218, Schedule of Regulations, Residence Districts IIIA.)

The Legion uses the property as the Town Code specifies. It conducts brief programs that could be labeled "[c]onference[s]" and it provides "training" to its brothers in formation and others. Substantially

> all of its activities consist of "[c]ontinuing education," and to that end it uses "[c]lassroom space," "teaching equipment" and "[o]ffices for staff." It also uses "[i]ndoor and outdoor physical recreational facilities," and "[h]ousing and dining facilities." In short, the Town Code definition might almost have been written to describe what the Legion does on the property-and this is unsurprising, for it was written to describe what IBM did there, and the Legion does much the same thing.
>
> The Legion provides religious training and education, while the activities of IBM and its tenants were largely secular . . .

MISSTATEMENTS OF FACT AND/OR LAW AND MATERIAL OMISSIONS IN THE PETITION

Pursuant to Rule 15 of the Rules of the Supreme Court, Respondent sets forth below perceived misstatements of fact and/or law in the Petition that bear on the issues that properly would be before the Court if *certiorari* were granted. (Citations to the Record below have been omitted).

First, Petitioner asserts that it created the subject OB-CE zoning district for business use with the intention of preserving and stabilizing the tax base. However, this statement is contradicted by Section 4.11 of Petitioner's Final Environmental Impact Statement ("FEIS") adopted at the time it created the OB-CE zoning district at the request of IBM Corporation. After discussing the potential real property tax revenue that would be generated by the IBM facility, the Town noted that, ". . . the amount of taxes payable may be affected by the availability of real estate tax abatements or exemptions." Thus, Petitioner's repeated assertion that its intention in creating the OB-CE zoning district was to limit users to taxpaying entities is a clear misstatement of material fact.

Second, Petitioner asserts that it created the OB-CE zoning district "... specifically for a business-only commercial/industrial 'corporate training center' setting to ensure that the property in that zone would remain taxable, unless a tax-exempt applicant applied for a special permit." This, too, is a clear misstatement of material fact.

Petitioner's own Verified Complaint that commenced this proceeding contradicts this assertion: Petitioner stated that "religious uses of the property are not permitted in the 'OB-CE' zoning district, either as a permitted principal use or as a special permitted use."

Thus, Petitioner asserted in 1997 that "religious uses" of the Property were not permitted at all, and in 2006 that such uses were permitted by special permit, notwithstanding that (a) there is no such special permit use in the Town's own Zoning Code, (b) the Zoning Code prohibits any use not specifically permitted by its terms, and (c) the Code contains no definition of the term "religious use."

In addition, any attempt to permit the use of the Property by a commercial, tax-paying owner while attempting to prohibit the identical use of the Property by a religious, tax-exempt owner would violate the basic principle of New York State jurisprudence that zoning regulations can regulate land uses but not land users.

Furthermore, Petitioner's assertions that its intention in creating the OB-CE zoning district was for business use only and to preserve and stabilize the tax base, is entirely contradicted by its assertion that a tax-exempt entity such as Respondent could obtain a special permit and thus qualify as a permitted use under zoning, an assertion which is clearly inconsistent with Petitioner's earlier contentions and contrary to Petitioner's Zoning Code.

Third, Petitioner omits any discussion of the key 1993 amendment to the OB-CE zoning provisions, which established the zoning provisions that were in effect in 1996 when Respondent purchased the property and remain in effect today. This is a misleading material omission.

The 1993 amendment was precipitated by a letter from IBM's chief real estate counsel Alan R. Wolfert dated June 1, 1992 to the Town in which Mr. Wolfert stated that attendance at IBM's programs had been significantly reduced, that IBM anticipated having a decreased need for such facilities, and that it "would like to promote greater utilization of the facility 'to adequately advance, support, serve and benefit' not only the 'technical and physical education of the employees of major corporations'" — which had been the use- controlling language in effect at the time -- "but that 'of others' as well."

In granting IBM's request to broaden the universe of potential users and uses of the facility, Petitioner amended the Code language to eliminate the limitation of uses to "private corporate," and the "opportunity for private enterprise" and "technical and physical education" when describing the purposes of the OB-CE zoning district.

The Town expanded the universe of permitted users of the facility to include "employees of major corporations *and others.*" (Emphasis added). Certainly, Respondent is one of the "others." The Court of Appeals found in this regard in its Opinion:

> IBM acquired the 97-acre property sometime before 1983, when the Town created a new "Office Corporate Education" or "OB-CE" zoning district, coextensive with the property. A provision of the Town Code enacted in that year said that one of

> the purposes of the new district was to provide an "opportunity for private enterprise" to educate "the employees of major corporations" (Town of Mount Pleasant, Addendum to Zoning Book, June 28, 1983). IBM built a conference center on the property, which it used to train its employees.
>
> IBM decided in the early 1990s that it wanted to rent out its conference center from time to time, and it asked for and was granted a change in the Town Code's description of the OB-CE district. A 1993 amendment eliminated the Code's reference to "private enterprise" and changed its language to refer to "the employees of major corporations and others" (*see* Town of Mount Pleasant Code § 218-74, as amended Feb. 9, 1993). After this zoning change, IBM rented the property to profit-making and nonprofit enterprises, including a university, a college and a church. These lessees used IBM's facility for conference and training purposes without objection from the Town.

(Pet. App. at 2a).

Fourth, Petitioner characterizes the Trial Court's findings that the Respondent's use of the Property was lawful because it was not being used as a seminary or private college. However, this misstates the Trial Court's finding. The Trial Court found that Respondent's use of the Property "complies in all respects with the OB-CE Zoning Regulations" and that its use was "identical in all material respects to IBM's use of the Property . . ." — a conclusion virtually identical to the unanimous factual determination of the Court of Appeals.

The Court of Appeals's holding is based solely upon its extensive factual findings and upon State law grounds. It presents no issue of law for review by this Court.

REASONS FOR DENYING THE PETITION

Respondent respectfully submits that the Court should deny the Petition for the following reasons:

1. This Court Does Not Have Jurisdiction to Hear this Appeal Because the Holding of the New York State Court of Appeals Is Based Exclusively upon an Adequate, Independent Ground of New York State Law.

The Court of Appeals based its Opinion upon its extensive findings of fact with respect to Respondent's actual use of the Property. Based upon those factual findings and principles of New York State law, the Court held that Respondent's use complied with the municipal zoning regulations applicable to the Property, stating, "When this action was brought ... the Legion then had available to it the state-law defense that we have found dispositive. The provision of state law on which this case turns is ... a local zoning code." (Pet. App. at 7a).

This holding is uniquely singular and local in its determination i.e., does one property owner's use of its property comply with applicable zoning? Thus, the case presents no issue over which this Court has jurisdiction.

Petitioner nevertheless asserts that one sentence of dictum warrants this Court's review, a sentence in which the Court of Appeals stated one of the reasons why it rejected Petitioner's contentions below; that is, that "keeping property in tax paying hands is not a legitimate purpose of zoning."

This Court stated in *Black v. Cutter Laboratories*, 351 U.S. 292 (1956) that it "reviews judgments, not statements in opinions." The Court went on to say,

> . . . it is our duty to look beyond the broad sweep of the language and determine for ourselves precisely the ground on which the judgment rests. This means no more than that we should not pass on federal questions discussed in the opinion where it appears that the judgment rests on adequate state grounds.

Id. at 298 (citations omitted).

The *Cutter Laboratories* Court dismissed petitioner's writ because the appealed-from decision of the Supreme Court of California involved "only California's construction of a local contract under local law, and therefore no substantial federal question is presented," *Id.* at 299. The Court also stated that, ". . . even if the State Court's opinion be considered ambiguous, we should choose the interpretation which does not face us with a constitutional question," *Id.* at 299.

The Court reaffirmed this principle in *Coleman v. Thompson*, 501 U.S. 722, 729 (1991), stating,

> This Court will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment. . . . In the context of direct review of a state court judgment, the independent and adequate state ground doctrine is jurisdictional. Because this Court has no power to review a state law determination that is sufficient to support the judgment, resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory.

(Citations omitted).

In the instant proceeding, the New York Court of Appeals stated that its holding was based upon state law grounds: ". . . the Legion . . . had available to it the state-law defense that we have found dispositive . . . The provision of state law on which this case turns is . . . a local zoning code . . ." For this reason alone, this Court should dismiss the Petition.

2. This Court Should Not Review a Question of Constitutional Law or a Federal Question That Petitioner Failed to Present Properly to the State Courts and Which the Court of Appeals Did Not Address.

This Court should decline review of the Fourteenth Amendment claim raised by Petitioner since Petitioner failed to raise that Constitutional issue in the state courts. This Court should also decline review of the federal question which Petitioner now seeks to raise, for the first time, in Section B of its 'Reasons For Granting the Petition.'

It is an established rule, with very rare exceptions, that this Court will not review a federal claim unless it has been "addressed by, or properly presented to, the state court that rendered the decision" on review. *Adams v. Robertson*, 520 U.S. 83 (1997) (dismissing the writ of certiorari as to constitutional issue as improvidently granted); *See also Bankers Life and Cas. Co. v. Crenshaw*, 486 U.S. 71 (1988) (declining to address constitutional issue). The policies behind this rule "are first, comity to the States, and second, a constellation of practical considerations, chief among which is our own need for a properly developed record on appeal." *Bankers Life*, 486 U.S. at 79; *See also Adams*, 520 U.S. at 90-91.

In *Adams*, petitioners sought a writ of certiorari to review the Alabama Supreme Court opinion which affirmed the lower court "addressing only state-law issues." This Court

had granted certiorari on the issue of whether the Due Process Clause of the Fourteenth Amendment had been violated. However, the Court then dismissed the writ as improvidently granted, noting that in almost all instances, it "will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review." *Id.* at 86.

The *Adams* Court pointed out that "the Alabama Supreme Court did not expressly address the question on which we granted certiorari" and petitioners had not "met their burden of showing that the issue was properly presented to that court." The Court explained that, "[w]hen the highest state court is silent on a federal question before us, we assume that issue was not properly presented, and the aggrieved party bears the burden of defeating this assumption, by demonstrating that the state court had 'a fair opportunity to address the federal question that is sought to be presented here.'" Id. at 86-87. (Citations omitted). This is a burden Petitioner has utterly failed to meet in the instant case.

The *Adams* Court stated the jurisprudential basis for this requirement:

> . . . 'it would be unseemly in our dual system of government' to disturb the finality of state judgments on a federal ground that the state court did not have occasion to consider. Thus, the rule affords state courts 'an opportunity to consider the constitutionality of the actions of state officials, and, equally important, proposed changes' that could obviate any challenges to state action in federal court.

Id. at 90. (Citations and internal quotation marks omitted).

The *Adams* Court also noted that this Court will generally refuse "to consider issues raised clearly for the first time in a petition for rehearing when the state court is silent on the question." *Id.* at 89, footnote 3. Here, Petitioner did not address or properly present the issue of tax base or fiscal zoning. Petitioner raised this issue for the first time in its motion for reargument to the New York Court of Appeals, which denied the motion without opinion. Consequently, since Petitioner failed to present this issue properly to the State courts and the New York Court of Appeals did not address the issue, this Court should deny review.

In *Bankers Life*, and *Cas. Co. v. Crenshaw*, 486 U.S. 71 (1988) this Court declined to address the issue of whether the Eighth Amendment's Excessive Fines Clause serves to limit punitive damages in state civil cases because the issue was not raised in the state courts below. The *Bankers Life* Court explained that review of a Constitutional claim not raised in the state court below "would short circuit a number of less intrusive, and possibly more appropriate, resolutions" such as state legislation, decisions of the state courts on state constitutional or "other adequate and independent nonfederal ground[s]," or allowing the state Supreme Court "its opportunity to decide the question of federal law in the first instance," thus giving this court the "benefit of well-developed record and a reasoned opinion on the merits." *Id.* at 79-80.

Similarly, in this case, the New York courts should have been given the opportunity to decide any federal or Constitutional issue and the New York State Legislature have been given a chance to amend its tax exemption or zoning enabling laws to reflect any change in the State's policy on the issue raised by Petitioner. This Court should therefore decline to review this alleged federal question, which Petitioner raised for the first time in its unsuccessful motion for reargument to the Court of Appeals and in this Petition for Writ of Certiorari.

3. Petitioner, a Municipal Corporation, Cannot Seek Protection under the Fourteenth Amendment to the United States Constitution.

Petitioner's argument with respect to the Fourteenth Amendment is, at best, unclear. Petitioner apparently attempts to assert rights under the Fourteenth Amendment, and its attempt is utterly without basis. This Constitutional provision was enacted to protect individuals from governmental misconduct and over-reaching. Quite simply, the Fourteenth Amendment does not "protect" the government from itself.

Section 1 of that Amendment states, in pertinent part:

> All *persons* born or naturalized in the United States . . . are *citizens* of the United States . . . No state shall make or enforce any law which shall abridge the privileges or immunities of *citizens* of the United States; nor shall any State deprive any *person* of life, liberty, or property, without due process of law . . .

(Emphasis added.)

The Fourteenth Amendment protects "persons" who are "citizens" against the actions of a "State." Petitioner, as an arm of the State, does not qualify for protections under the Fourteenth Amendment.

This Court has held that a political subdivision of the state has no rights under the United States Constitution which it may invoke in opposition to its creator, the state. *See City of Newark v. State of New Jersey*, 262 U.S. 192 (1923) (the regulation of municipalities is within the domain of the state so that city could not invoke the protection of the 14th Amendment against the state); *City of Trenton v. State of*

New Jersey, 262 U.S. 182 (1923) (municipal corporation is merely a department of the state which may withhold, grant or withdraw powers and privileges as it sees fit so that city could not attack state act as violative of due process and Fifth Amendment).

If, however, Petitioner seeks to utilize the Court of Appeals's Opinion as a springboard for an opinion on an issue of "tax based" or "fiscal zoning," any such attempt would be improper as it would seek an advisory opinion from the Court on a "statement" of dictum in the Opinion, rather than upon the judgment itself, *see Black v. Cutter Laboratories*, 351 U.S. at 297-298.

Thus, this case does not present *any* question of Constitutional law and the Court should deny the Petition.

4. The Court of Appeals's Opinion Does Not Conflict with the Holdings of Other States' Courts of Last Resort.

Petitioner asserts that the Court of Appeals Opinion has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

However, for the reasons discussed above, no federal question is properly before this Court. The instant case, and the cases Petitioner cites in support of its contention, involve matters of zoning law which are uniquely state and local in nature, as zoning ordinances are creatures of state law as an exercise of the states' police power, and principles of state law evolve through state statutes, regulations, and decisional law; this is the very essence of federalism. Each state is free, within very broad constitutional parameters such as the limitations imposed on regulatory "takings" jurisprudence, to adopt and enforce its own land use statutes and regulations.

See e.g. Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). Local municipalities, in turn, can exercise that police power which has been delegated to them by the state. EDWARD H. ZIEGLER, JR., RATHKOPF'S THE LAW OF ZONING AND PLANNING § 1:8 (4th ed. 2005)

The cases Petitioner cites reflect only the different states' views on proper purposes of zoning, views that the courts have expressed in the context of highly differing fact patterns and on questions of state law. None of the cases Petitioner cites deals with the issues of land-use regulations and an owner's entitlement to real property tax exemption, and thus are inapposite. Also, Petitioner fails to cite any disagreements among decisions of the federal Courts of Appeals: these are matters for determination by the state courts, under state law and principles of the state constitutions — and not federal law.

Initially, Petitioner contends that a conflict exists by referring to state court cases that state that property values may be considered in zoning decisions. While this contention may or may not be true in different states, it is very different from municipal action that seeks forcibly to keep a parcel of real property on the tax rolls, despite compliance by the owner with applicable zoning, due solely to the owner's tax exempt status.

Therefore, those decisions Petitioner cites in which other states' courts hold that preservation of property values or increasing municipal tax bases are valid purposes of zoning, are irrelevant and do not establish a conflict with the Court of Appeals's Opinion. *See, e.g., Mississippi Manufactured Housing Ass'n v. Board of Supervisors of Tate County*, 878 So.2d 180 (Miss. Ct. App. 2004), cert denied, 878 So.2d 67 (Miss. 2004); *MDJ Properties, Inc. v. Union Twp. Bd. of Trustees*, 2000 WL 313502 (Ohio Ct. App. 2000) dismissed, appeal not allowed,

89 Ohio St.3d 1465, 732 N.E.2d 998 (2000) (an unreported decision by the state's intermediate appellate court); *Beck v. City of St. Paul*, 304 Minn. 438, 231 N.W.2d 919 (Minn. 1975); *Lauderbaugh v. Hopewell Township*, 319 F.3d 568 (3d Cir. 2003) (in a case challenging the restriction of mobile homes to one zoning district, the court held that "localities may legitimately regulate land use to advance a myriad of different interests, including property values, aesthetics, health, and the general welfare . . ."); *Harvey v. Town of Marion*, 756 So.2d 835 (Miss. Ct. App. 2000) (a decision by the state's intermediate appellate court); *Warren v. Municipal Officers of Town of Gorham*, 431 A.2d 624 (Me. 1981).

Second, statements made in those decisions Petitioner cites with respect to preservation of a municipal tax base and/or fiscal motives underlying zoning decisions are simply dictum, and are not germane to the actual holdings in those cases. These cases certainly do not conflict with the holding in the instant case, i.e., that Respondent's use of its property complies with the local zoning provisions. *See, e.g., Citizens Ass'n of Georgetown, Inc. v. District of Columbia Zoning Comm'n*, 402 A.2d 36 (D.C. 1979); *Woods v. Kittitas County*, 130 Wash.App. 573, 123 P.3d 883 (Wash. Ct. App. 2005) (a decision by the state's intermediate appellate court).

5. The Court of Appeals's Opinion Does Not Involve a Question of Federal Law.

Petitioner cites various decisions to support its argument that this Court should review a question of federal law supposedly raised by the Court of Appeals. Petitioner asserts that there are differing views among some states' courts as to whether preserving a municipal tax base is a valid consideration in land use decisions and that this Court should provide guidance on this subject.

However, Petitioner ignores the fact that the Court of Appeals held only that Respondent's use of its property complies with the local zoning code, a question exclusively and explicitly one of New York State law, not federal law. The Court of Appeals stated that Respondent's state law defense was dispositive, making any possible question of federal law dictum. The Court of Appeals's Opinion did not mention either the federal question now raised by Petitioner, or the Fourteenth Amendment.

Thus, the cases Petitioner cites in its attempt to create a conflict on a question of federal law among state courts of last resort fail to support Petitioner's contention; the cases are fact-specific holdings containing various statements of dictum regarding the validity of specific sections of local municipalities' zoning ordinances under the laws of the respective states. They present no federal question and no conflict among the state courts of last resort.

For example, Petitioner cites *Griswold v. City of Homer*, 925 P.2d 1015 (Alaska 1996), in which the court upheld a zoning amendment, rejecting petitioner's claim that the amendment was arbitrary and capricious and constituted "spot zoning." Clearly, the court's holding is a decision under state law that does conflict with the holding in the instant case.

Petitioner also cites *Southern Burlington County N.A.A.C.P. v. Mount Laurel Twp.*, 67 N.J. 151, 336 A.2d 713 (N.J. 1975), in which the court concluded on state law grounds that the township could not exclude certain categories of people by making it physically and economically impossible to provide low and moderate income housing in the municipality, an entirely different issue than is present in the instant case, i.e., the compliance of a single user with the provisions of local zoning.

Petitioner also cites other state courts' decisions that observe that increasing the tax base or "fiscal zoning" are not legitimate objectives of zoning, as Petitioner attempts to divine differing dicta statements in those decisions. However, any such differences are matters of state, not federal, law, and are unrelated to the holding in the instant case. *See Bossman v. Village of Riverton*, 291 Ill. App. 3d 769, 684 N.E.2d 427 (Ill. App. Ct. 4th Dist. 1997) appeal denied, 175 Ill. 2d 523, 689 N.E.2d 1137 (1997); *Zuckerman v. Town of Hadley*, 442 Mass. 511, 813 N.E.2d 843 (Mass. 2004); *Kirby v. Township Committee of Bedminster*, 341 N.J.Super. 276, 775 A.2d 209 (N.J. Super. Ct. App. Div. 2000) (a decision by the state's intermediate appellate court); *Sod Farm Assocs. v. Springfield Twp. Planning Bd.*, 298 N.J.Super. 84, 688 A.2d 1125 (N.J. Super. Ct. Law Div. 1995), aff'd, 297 N.J. Super. 584, 688 A.2d 1058 (N.J. Super. Ct. App. Div. 1996).

Thus, Petitioner has merely cited a handful of state court decisions that address matters of local and state law. None raises a conflict among the state courts of last resort on a question of federal law.

CONCLUSION

For the reasons set forth above, Respondent submits that Petitioner has failed to satisfy any of the requirements for this Court to grant its Petition, and Respondent respectfully requests that this Court deny in all respects the Petition for a Writ of Certiorari.

Respectfully submitted,

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IN THE

Supreme Court of the United States

TOWN OF MOUNT PLEASANT,

Petitioner,

v.

LEGION OF CHRIST, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

REPLY BRIEF

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CORPORATE DISCLOSURE STATEMENT

Petitioner's Corporate Disclosure Statement was set forth at page *ii* of its Petition for a Writ of Certiorari, and there are no amendments to that Statement.

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INTRODUCTION

The nationally significant issue that is raised in the Petition for a Writ of Certiorari (the "Petition") submitted by Petitioner Town of Mount Pleasant (the "Town") is the ability of a municipality to use its police power to preserve its tax base through zoning and land use controls. This is a fundamental municipal police power issue that (a) requires direction from this Court to provide uniformity in the law throughout the nation; and (b) has an impact on every municipality and real estate taxpayer. The Brief in Opposition (the "Opposition Brief") of Respondent Legion of Christ, Inc. (the "Legion") attempts to have this Court avoid defining the national law on this important issue by making untenable arguments.

The Court of Appeals of the State of New York (the "Court of Appeals") rejected the Town's fiscal zoning law without citing any legal authority. Such decision is contrary to the holdings of other state courts of last resort and a United States Court of Appeals. This case clearly presents an important question of federal law regarding the Fourteenth Amendment's restriction on a municipality's police power.

Accordingly, this Court needs to address this issue in order for there to be uniformity in the law as the Court of Appeals Decision, in twelve (12) words, takes away a recognized, fundamental police power of municipalities.

RESPONSE TO THE LEGION'S ARGUMENTS FOR DENYING THE PETITION

As discussed below, the Legion's arguments in support of this Court denying the Petition are without merit, are smokescreens and should not be the basis for this Court refusing to address the important issue at bar.

A. *This Court Has Jurisdiction to Hear This Appeal*

The Legion argues that this Court does not have jurisdiction to hear this appeal because the opinion of the Court of Appeals dated June 6, 2006 (the "Court of Appeals Decision") was based exclusively upon an adequate, independent ground of New York

State law. It, however, has misconstrued the Court of Appeals Decision.

As a preliminary matter, the Legion took out of context the Court of Appeals' finding that the Legion had a dispositive state-law defense. Such statement was made when the Court of Appeals affirmed the Supreme Court of the State of New York, Appellate Division, Second Department's (the "Appellate Division") denial of attorneys' fees in connection with the Legion's claim that the Town violated the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA"). Specifically, the Court of Appeals noted that:

> [w]hen this action was brought, RLUIPA had not even been enacted, and the Legion then had available to it the state-law defense that we have found dispositive. The provision of state law on which this case turns is not a state counterpart to RLUIPA, but a local zoning code. It would distort reality to hold that the Legion is the 'prevailing party' in an RLUIPA case.

Petition, Appendix at p. 7a.

The Legion is trying to simplify this case by arguing that the Court of Appeals Decision solely rests on the interpretation of the Zoning Code of the Town of Mount Pleasant (the "Town Zoning Code"). Importantly, however, the Court of Appeals stated that the reason behind its interpretation was that "KEEPING PROPERTY IN TAXPAYING HANDS IS NOT A LEGITIMATE PURPOSE OF ZONING." Petition, Appendix at p. 7a (emphasis added). In other words, the Court of Appeals determined that fiscal zoning is not permissible in New York State, even though it is permissible in other states.

Such determination is not dictum. Rather, it is the rationale for the Court of Appeals' holding that the Legion's use of its property (the "Property") complied with the Town Zoning Code. The Court of Appeals did not believe that the Town could prohibit the Legion's use of the Property because the Legion is

a tax-exempt entity.[1] It disregarded the expressed intent of the Office Business-Corporate Education Zone District (the "OB-CE District") and the Town's Comprehensive Master Plan (the "Master Plan") when it made its determination.

The Legion's reliance on *Black v. Cutter Laboratories*, 351 U.S. 292 (1956) and *Coleman v. Thompson*, 501 U.S. 722 (1991) is misplaced. Unlike *Cutter Laboratories*, the issue presented herein does not involve just the interpretation of the Town Zoning Code without any substantial federal question being presented. The primary issue herein is whether fiscal zoning is permissible, which turns on the Fourteenth Amendment. This issue needs to be determined in order for there to be uniformity in the law throughout the land.

Coleman is similarly distinguishable. In *Coleman*, this Court determined that it could not review a question of federal law decided by a state court if the state court's decision rests on a state law ground that is sufficient to support the judgment. In this case, the Court of Appeals' rejection of fiscal zoning resulted in its determination that the Legion's use complied with the Town Zoning Code. Said another way, if the Court of Appeals had determined that fiscal zoning was a legitimate act of the municipality, it would have never had to address the application of the Town Zoning Code to the Legion's use of the Property. Accordingly, the Court of Appeals Decision does not rest on a state law ground that is independent of the federal question of the permissibility of fiscal zoning.

B. *The Fiscal Zoning Issue Herein Was Presented to the State Courts and Was the Basis of the Court of Appeals Decision*

The Legion contends that this Court should not review the Fourteenth Amendment issue raised in the Petition because the Town did not raise before the state courts the constitutional claim or the federal question regarding the Fourteenth Amendment's potential restriction on a municipality's police power. It also

[1] There are many other zone districts in the Town in which tax-exempt entities are permitted.

contends that the Court of Appeals did not address such issue or federal question. Such contention is erroneous.

The primary issue in this case has always been the legal authority for the Town to engage in fiscal zoning and keep the Property on the tax rolls in accordance with the Master Plan and the Town Zoning Code. It has consistently been presented to the state courts. For example, in its decision dated November 29, 1999 (the "1999 Appellate Division Decision"), the Appellate Division discussed the Town Board of the Town of Mount Pleasant's (the "Town Board") intent in approving International Business Machines Corporation's ("IBM") proposed corporate technical institute (the "IBM Institute") on the Property, which was to expand the tax base. Petition, Appendix at p. 30a

The Court of Appeals also specifically addressed the issue when it stated that "keeping property in taxpaying hands is not a legitimate purpose of zoning." Petition, Appendix at p. 7a.

In its Opposition Brief, the Legion admitted that this issue was presented to the state courts. Specifically, the Legion argued that the Court of Appeals' fiscal zoning holding was one of the reasons why it rejected the Town's contentions below. *See* Opposition Brief at p. 9.

This case is distinguishable from *Adams v. Robertson*, 520 U.S. 83 (1997). In *Adams*, the highest state court was silent on the federal question raised before this Court. *In the instant case, the Court of Appeals made a specific finding about the ability of a municipality to consider its tax base when using its zoning and land use controls, which is the constitutional issue and federal question set forth in the Petition.*

In *Bankers Life and Cas. Co. v. Crenshaw*, 486 U.S. 71 (1988), this Court declined to address the constitutional issue therein because it was not raised in the state courts below. This case is distinguishable because, as discussed above, the issues raised herein were presented to the state courts below and were specifically addressed by the Court of Appeals. Accordingly, the Court of Appeals decided the constitutional issue and federal

question and gave this Court its opinion on such issue and question.

C. *The Town Is Not Seeking Protection Under the Fourteenth Amendment*

The Legion argues that the Town cannot assert rights under the Fourteenth Amendment. It misunderstood the Town's argument.

The Town is not seeking protection under the Fourteenth Amendment. The Town is simply asking this Court to review whether the Fourteenth Amendment prohibits a municipality from using its police power to preserve its tax base for the benefit of all residents and businesses through zoning and land use controls.

Despite the Legion's contentions, the Town is not seeking an advisory opinion from this Court on the issue of taxes based on fiscal zoning. The Court of Appeals specifically addressed the issue, which was determinative on the Legion's use of the Property.

Accordingly, this case presents a question of constitutional law regarding fiscal zoning that this Court should consider.

D. *The Court of Appeals Decision Conflicts with the Holdings of Other State Courts of Last Resort and a United States Court of Appeals*

The Legion contends that the cases the Town cited in support of the Petition are uniquely state and local in nature and, therefore, simply reflect the different states' views on the proper purpose of zoning. It further contends that such matters are for the determination by the state courts under state law and principles of the state constitution rather than federal law. Such contentions are erroneous. Fiscal zoning is a national issue that impacts all municipalities and taxpayers and requires uniformity.

The Legion ignores the fact that this Court and other federal courts have considered local zoning and other land use regulations. For example, this Court has considered whether local zoning and land use controls violated the United States Constitution in numerous cases, including *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926) and *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974).

United States Courts of Appeals have also considered such issue on many occasions. *Koscielski v. City of Minneapolis*, 435 F.3d 898 (8th Cir. 2006); *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643 (10th Cir. 2006); *Isbell v. City of San Diego*, 258 F.3d 1108 (9th Cir. 2001); *Mount Elliott Cemetery Ass'n v. City of Troy*, 171 F.3d 398 (6th Cir. 1999).

Accordingly, it is entirely proper for federal courts to consider the validity of local zoning and land use regulations, including the issue of whether they are valid under the United States Constitution.

The Court of Appeals Decision held that fiscal zoning is improper in New York State. Such determination conflicts with the holdings of other state courts of last resort and a United States Court of Appeals, which have determined that the preservation of a local tax base is a legitimate purpose of zoning and can be considered by a municipality when making zoning determinations. *See* Petition at pp. 10-11.

Despite the Legion's contentions, the above holdings are not dictum. They specifically address what the proper considerations are when a municipality adopts a zoning or land use control. In addition, differences among fact patterns and local ordinances are irrelevant to whether fiscal zoning is a proper consideration in the first instance.

A leading commentator on Court of Appeals' decisions, Professor David D. Siegel, characterized the statement of the Court of Appeals as "a broad and perhaps potentially controversial statement." New York State Law Digest No. 561 (September 2006).

This Court, therefore, should review the Court of Appeals Decision in order to resolve this conflict among the state courts of last resort and a United States Court of Appeals.

E. *The Court of Appeals Decision Involves a Question of Federal Law*

The Legion argues that no federal question is presented herein because the Court of Appeals Decision held only that the Legion's use of its Property complies with the Town Zoning Code.

Again with this simplistic approach, the Legion fails to recognize that the Court of Appeals specifically rejected the Town's

use of fiscal zoning, which implicates Fourteenth Amendment considerations and the Town's use of its police power.

As discussed above, the holdings of other state courts of last resort and one United States Court of Appeals on the fiscal zoning issue cannot be disregarded on the grounds that their holdings are dictum or fact-specific.

Other state courts have reached different conclusions, including the determinations that fiscal zoning is only proper in some instances, rezoning that would increase the tax base is not a legitimate objective of zoning and fiscal zoning is an improper zoning consideration. *See* Petition at pp. 13-14.

Accordingly, this Court should review the issues presented herein in order to create uniformity in the law of the land as to whether fiscal zoning is proper under the Fourteenth Amendment.

Response To Alleged Misstatements Of Fact And/Or Law And Material Omissions In The Petition

The Legion contends that there were misstatements of fact and/or law in the Petition. The Legion is mistaken.

A. *The Town of Mount Pleasant Planning Board's Final Environmental Impact Statement Does Not Alter the Town's Intent in the Creation of the OB-CE District*

The Legion contends that the Town's assertion that it created the OB-CE District for business use with the intention of preserving and stabilizing the tax base is contradicted by Section 4.11 of the Town's Final Environmental Impact Statement (the "FEIS") adopted at the time it created the OB-CE District. Such contention is erroneous.

On June 28, 1983, the Town Board rezoned the Property to the OB-CE District.

The FEIS was not adopted at the time the Property was rezoned. Rather, it was adopted in October 1983 by the Town of Mount Pleasant Planning Board (the "Planning Board") in connection with IBM's proposed IBM Institute on the Property.

The FEIS does not negate the Town Board's clear intent that is demonstrated in the legislative history for the OB-CE

District. For example, one of the purposes of the OB-CE District was the Town's:

> desire to provide the appropriate physical setting and opportunity for private enterprise to adequately advance, support, serve and benefit the technical and physical education of the employees of major corporations by providing support facilities and an environment conducive to such education and physical training.

In the 1999 Appellate Division Decision, the Appellate Division noted that in granting site plan approval to IBM:

> the Town Board found that that use would foster the goals set forth in the Town Master Plan to encourage office development in 'selected locations . . . *to expand the Town's tax base to help residential property owners in the financing of the public facilities and services needed by the Town's residential population.*'

Petition, Appendix at p. 30a (emphasis added).

Section 4.11 of the FEIS was intended to consider the fiscal implications of the IBM Institute. Although the Planning Board noted that the exact amount of real estate taxes payable might be impacted by abatements or exemptions, it also determined that the tax contribution of the IBM Institute can be viewed as a net gain to the Town's financial resources.

B. ***The Special Permit Requirement for Certain Uses Was Determined by the Appellate Division***

The Legion argues that the Town's position regarding special permit requirements is inconsistent. The Legion, however, fails to mention the procedural history of this case which resulted in the Town requiring the Legion to obtain a special permit.

When the Town commenced this action, it alleged in its Verified Complaint dated September 5, 1997, that the Legion's religious use of the Property was incompatible with the goal of the OB-CE District to preserve and maintain the Town's tax base, with the Master Plan and with the permitted uses in the Town Zoning Code.

In the 1999 Appellate Division Decision, the Appellate Division held that uses previously permitted by special permit were still permissible by special permit in the OB-CE District. The Appellate Division determined that the Legion might have been using the Property in a manner similar to a seminary or a private college, which was not permissible without a special permit.

After the Appellate Division rendered the 1999 Appellate Division Decision, the Town complied with it by requiring the Legion to obtain a special permit since the Legion's use of the Property constituted a seminary and/or a private college. The Legion refused to do so.

The Town's compliance with the 1999 Appellate Division Decision does not negate the Town's intention when it created the OB-CE District. It also does not change the Town's position that the Legion's use of the Property is impermissible because, unlike IBM, the Legion is a tax-exempt entity. Such position is not contrary to the principle that zoning regulations can regulate land uses but not land users because it is the essence of fiscal zoning (*i.e.*, preservation of the tax base through zoning and land use controls).

C. ***The 1993 Amendment to the OB-CE District Is Consistent with the Town's Intent When It Created the OB-CE District***

The Legion contends that the 1993 amendment to the OB-CE District (the "1993 Amendment") is important because it allegedly modified the purposes of the OB-CE District. The 1993 Amendment, however, is consistent with the Town's intent when it created the OB-CE District.

As a preliminary matter, the Legion misquotes the letter dated June 1, 1992 from Alan R. Wolfert to the Town Board. The letter simply discusses the reduced attendance at IBM's classes and that "IBM would like to promote greater utilization of the facility."

As revised by the 1993 Amendment, one of the purposes of the OB-CE District is:

> the desire to provide office, housing, dining and conference facilities in an appropriate physical setting to adequately advance, support, serve and benefit the

education of the employees of major corporations and others.

Such purpose is consistent with the Town's intent when it created the OB-CE District because it enabled IBM to fully utilize the IBM Institute *and kept the Property on the tax rolls.*

The Legion also contends that it is one of the "others" referred to in the 1993 Amendment. As the Town has maintained throughout this litigation, the Legion's use of the Property was different than IBM's use of the Property. As determined by the Appellate Division, such different use required the Legion to obtain a special permit.

In addition, the Legion's use of the Property fails to comply with the Master Plan and the Town Zoning Code because the Legion is tax-exempt.

D. ***The Town Has Properly Stated the Trial Court's Findings***

The Legion argues that the Town has misstated the findings of the Supreme Court of the State of New York, County of Westchester (the "Trial Court") because it "characterized" the Trial Court's findings that the Legion's use of the Property was lawful because it was not being used as a seminary or private college.

The Legion overlooked the Trial Court's Judgment filed February 4, 2004, which ordered, adjudged and declared that the Legion's "use of the Property for training, education and conferences for lay people, priests, ordained members of [the Legion's] Order and Brothers in Formation is not that of a private college or a seminary." Petition, Appendix at p. 13a.

CONCLUSION

For the reasons set forth above and in the Petition, it is respectfully requested that this Court grant a petition for a writ of certiorari to review this important case of national impact.

Respectfully submitted,

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